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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JUAN MEDINA,
12 Petitioner,
13 v.
14 SUPERIOR COURT OF
15 CALIFORNIA,
16 Respondent.

Case No. CV 18-09167 AB (RAO)

MEMORANDUM AND ORDER
RE SUMMARY DISMISSAL OF
PETITION FOR WRIT OF
HABEAS CORPUS AND DENIAL
OF CERTIFICATE OF
APPEALABILITY

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18 **I. BACKGROUND**

19 On October 19, 2018, Petitioner Juan Medina (“Petitioner”) filed a Petition for
20 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (“Petition”). Pet., Dkt. No. 1.

21 The Petition states that Petitioner was convicted of his underlying criminal
22 offense either in 2009 or 2012, after entering a plea of *nolo contendere* pursuant to a
23 plea deal. Pet. at 2, 3. Petitioner did not appeal his conviction, nor has he filed any
24 state habeas petitions in the California Supreme Court prior to initiating the instant
25 habeas action. *Id.* at 3-5.

26 The Court issued a screening order on November 21, 2018, directing Petitioner
27 to submit a response explaining his exhaustion of state remedies and to explain why
28 the Petition is not time barred. Dkt. No. 6. On December 13, 2018, Petitioner filed

1 a statement responding to the Court’s order (“Response”), but the Response does not
2 address exhaustion of state remedies. *See* Dkt. No. 7.

3 **II. LEGAL STANDARD**

4 Under Rule 4 of the Rules Governing Section 2254 Cases in the United States
5 District Courts, the Court may dismiss a petition “[i]f it plainly appears from the
6 petition and any attached exhibits that the petitioner is not entitled to relief in the
7 district court.” The “Ninth Circuit has held that a federal court may raise the failure
8 to exhaust issue *sua sponte* and may summarily dismiss on that ground.” *White v.*
9 *Paramo*, Case No. CV 16-03531-ODW (KES), 2016 WL 3034669, at *2 (C.D. Cal.
10 May 27, 2016) (citing *Granberry v. Greer*, 481 U.S. 129, 134-35, 107 S. Ct. 1671,
11 95 L. Ed. 2d 119 (1987); *Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992);
12 *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1982) (per curiam)) (dismissing
13 petition for failure to exhaust state remedies).

14 **III. DISCUSSION**

15 A state prisoner must exhaust his state court remedies before a federal court
16 may consider granting habeas corpus relief. 28 U.S.C. § 2254(b)(1)(A); *O’Sullivan*
17 *v. Boerckel*, 526 U.S. 838, 842, 119 S. Ct. 1728, 144 L. Ed. 2d. 1 (1999). To satisfy
18 the exhaustion requirement, a habeas petitioner must fairly present his federal claims
19 in the state courts in order to give the State the opportunity to pass upon and correct
20 alleged violations of the prisoner’s federal rights. *Duncan v. Henry*, 513 U.S. 364,
21 365, 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995) (per curiam). A habeas petitioner must
22 give the state courts “one full opportunity” to decide a federal claim by carrying out
23 “one complete round” of the state’s appellate process in order to properly exhaust a
24 claim. *O’Sullivan*, 526 U.S. at 845. He must present his claims to the highest state
25 court with jurisdiction to consider it or demonstrate that no state remedy remains
26 available. *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (en banc).

27 Here, Petitioner acknowledges in the Petition that he has not exhausted his
28 state remedies. Further, the Response fails to address the issue of exhaustion as

1 directed to do so by the Court. Finally, a check of the public records of the California
2 Supreme Court does not reflect the filing of any habeas petitions by Petitioner.
3 Although the exhaustion requirement may be excused under limited circumstances,
4 *see* 28 U.S.C. § 2254(b)(1)(B)(i)-(ii), none of these circumstances appear to exist
5 here. Petitioner has failed to exhaust his claims in state court, and summary dismissal
6 of this action is appropriate.

7 Dismissal of the Petition is without prejudice to Petitioner's later pursuing
8 habeas relief in federal court upon exhausting available remedies in the state courts.
9 Petitioner is warned, however, that under 28 U.S.C. § 2244(d)(1), "[a] 1-year period
10 of limitations shall apply to an application for a writ of habeas corpus by a person in
11 custody pursuant to the judgment of a State court."

12 **IV. CERTIFICATE OF APPEALABILITY**

13 Under the Antiterrorism and Effective Death Penalty Act of 1996, a state
14 prisoner seeking to appeal a district court's final order in a habeas corpus proceeding
15 must obtain a Certificate of Appealability ("COA") from the district judge or a circuit
16 judge. 28 U.S.C. § 2253(c)(1)(A). A COA may issue "only if the applicant has made
17 a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).
18 "A petitioner satisfies this standard by demonstrating that jurists of reason could
19 disagree with the district court's resolution of his constitutional claims or that jurists
20 could conclude the issues presented are adequate to deserve encouragement to
21 proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L.
22 Ed. 2d 931 (2003).

23 When the Court dismisses a petition on procedural grounds, it must issue a
24 COA if the petitioner shows: (1) "that jurists of reason would find it debatable
25 whether the petition states a valid claim of the denial of a constitutional right"; and
26 (2) "that jurists of reason would find it debatable whether the district court was
27 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct.
28 1595, 146 L. Ed. 2d 542 (2000).

1 Here, the Court is summarily dismissing the instant Petition without prejudice
2 because the Court has determined that Petitioner has failed to exhaust his habeas
3 claims in state court. The Court finds that Petitioner cannot make the requisite
4 showing that jurists of reason would find it debatable whether the district court was
5 correct in its procedural ruling.

6 **V. ORDER**

7 Based on the foregoing, IT IS ORDERED THAT:

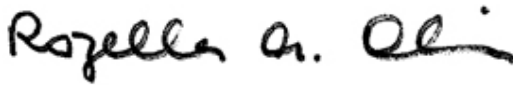
- 8 1. The Petition is **DISMISSED** without prejudice; and
9 2. A Certificate of Appealability is **DENIED**.

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11 DATED: 3/4/2019



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13 **ANDRÉ BIROTTE JR.**
14 **UNITED STATES DISTRICT JUDGE**

14 Presented by:

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17 **ROZELLA A. OLIVER**
18 **UNITED STATES MAGISTRATE JUDGE**